

April 14, 2005

Dear Colleague,

We are writing to seek your support for our temporary agricultural worker reform legislation. While we would have preferred that this subject not delay the Emergency Supplemental Appropriations bill, because Senator Craig has laid down S. 359, the Agricultural Job Opportunities, Benefits, and Security Act of 2005 (AgJOBS), as an amendment to the supplemental, we need to offer our amendment as an alternative. Our amendment will provide a new workable guest worker program to meet the needs of agricultural labor -- it has the support of the American Farm Bureau -- but without the controversial amnesty provisions of S. 359.

S. 359 offers illegal aliens a fast-track to citizenship in the United States. The bill requires that aliens be given "temporary resident status" for having worked as little as 2.5 weeks of accumulated agricultural labor over a 3.5 month period (that's a minimum of 100 hours of work) -- or 3.5 months of full-time employment. Once an alien has "temporary resident status," he or she will automatically qualify for lawful permanent residence after 1 year of full-time employment. (This permanent status is often characterized as "green card" status.) Every individual who goes from an illegal immigrant to a permanent resident under S. 359 has the opportunity to apply for citizenship (*see* 8 U.S.C. § 1427(a)).

Sponsors of the bill argue that these provisions are not amnesty, but instead, "rehabilitation." But if amnesty means anything, it means giving illegal immigrants an advantage over legal applicants for green card status and citizenship, which S. 359 clearly does. Offering a specific path to citizenship to people based on their having entered the United States illegally, and having engaged in illegal employment with fraudulent documents while here, and not requiring them to leave the country to apply for green card status from their country of origin as most every legal applicant must do, obviously grants an advantage solely because of their illegal presence in the United States. That is not "rehabilitation."

As many intending immigrants will attest, citizenship is the most treasured status that the United States can bestow on a person. Many believe citizenship should not even be made available to those who have deliberately violated our laws. But, at a minimum, an illegal immigrant should have to get in line with all other applicants in his or her country of origin and wait their turn like everyone else. Anything else is obviously a form of amnesty.

We have learned through experience that amnesties for illegal aliens promote further illegal immigration, encourage fraud, and undermine the confidence of the public

in our immigration system. That probably explains why amnesties are so unpopular with Americans and why members of the House of Representatives have indicated opposition to any immigration measure containing amnesty.

A second amnesty provision in S. 359 actually allows aliens who claim they have formerly illegally worked in the United States in agriculture but have since returned home, to return to the U.S.-Mexico border to apply for the legal status created by the bill! This will potentially allow hundreds of thousands of additional aliens who have previously worked illegally in the United States to receive amnesty (whether they actually did or can establish it with the same kind of counterfeit documents currently used for illegal employment).

Our amendment accomplishes the workforce goals like S. 359, but without the amnesty provisions.

Our temporary agricultural guest worker program will match willing workers with willing employers. It takes a two-pronged approach to the current illegal agricultural workforce. First, it updates the current H-2A program by requiring farmers to pay a prevailing wage, one that accurately reflects area wages. The legislation also streamlines the current application process so that farmers no longer have to petition 3 different Federal agencies when they cannot find an adequate domestic workforce.

Our legislation also recognizes the need to address the large number of illegal immigrants currently working in the United States in agricultural fields. Instead of granting amnesty with green card status, our legislation creates a new temporary agricultural worker category (we refer to it as a “blue card”). Under the blue card program, employers are allowed to petition for an employee to receive a blue card after they have tried to recruit and hire American workers but have been unsuccessful. A blue card will be valid for a 3-year period and can be renewed twice, provided the employer meets certain attestation requirements, to show that there is still no available American worker to take the job.

Our bill also provides a much easier H-2A process for hiring legal immigrants for periods less than a year. This is necessary both to modernize the H-2A provisions to make them easier for employers and workers to use, but also provide a larger pool of potential temporary agricultural workers than the blue card status provides. Eventually, all temporary workers will need to use these new H-2A provisions, but, unless it is easy for employers and workers alike, the magnet for illegal immigration will remain. We need a legal way to meet our labor needs that will remove the incentive for illegal immigration.

Blue card holders will be allowed to travel freely between their home country and the United States. This will allow blue card workers to maintain ties with their lives and families at home. Blue cards are available only to those currently employed as illegal workers in agricultural areas, but our legislation expands the definition of “agriculture” in recognition of the interdependence of activities in the agricultural field. This broader definition of agriculture not only encourages a greater number of currently illegal aliens in the United States to come forward and go through the Homeland Security background checks necessary to obtain a blue card, it also provides relief for those occupations that

currently rely on H-2B visas – like packaging and processing – which are in short supply and high demand.

Finally, the new blue card will be a machine-readable, tamper-resistant document that contains biometric identifiers so that our immigration officials will be able to confirm that an alien holding a blue card is who the card claims he or she is, and that the card is valid and unexpired. Anyone who obtains a blue card and wants to adjust to a different immigrant or non-immigrant status (like legal permanent residence) may do so by revoking the blue card and returning to the home country.

We hope you will support this amendment when it comes before the Senate for a vote.

Very truly yours,

Saxby Chambliss
U.S. Senator

John Kyl
U.S. Senator